

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****7 CFR Part 1710****RIN 0572-AA89**

Long-Range Financial Forecasts of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Rural Utilities Service's (RUS) regulations on long-range financial forecasting. This final rule provides that RUS may request a sensitivity study on a case-by-case basis.

EFFECTIVE DATE: This final rule is effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Alex Cockey, STOP 1560, Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400

Independence Ave., SW., Washington, DC 20250-1560, telephone number: (202) 720-9545, E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order.

In accordance with the Executive Order and the rule; (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retro-active effect will be given to the rule; and (3) administrative proceedings are required to be exhausted prior to initial litigation against the Department (7 U.S.C. 6912).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) definition of the rule does not include rules related to the RUS electric program, and therefore, the Regulatory Flexibility Act does not apply to this rule.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended) under control number 0572-0032.

Send questions or comments regarding this burden or any other aspect of these collection of information, including suggestions for reducing the burden to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., STOP 1522, Washington, DC 20250-1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402-9325, telephone number (202) 512-1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372,” (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus today’s rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

BACKGROUND

The Rural Utilities Services (RUS), makes loans, loan guarantees to RUS electric borrowers, and provides accommodations of its lien in order for the electric borrowers to provide electric service to new consumers, and to improve the quality and quantity of electric service to existing consumers in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 et seq. (RE Act). RUS, pursuant to the RE Act, may make a loan only if

the Administrator of RUS determines that the security thereof is reasonable adequate and such loan will be repaid within the time agreed.

RUS regulations establishing the requirement that borrowers submit a long-range financial forecast as part of and to support a loan application are contained at 7 CFR part 1710, subpart G. Part 1717, subparts R and S of 7 CFR contains the policies for lien accommodations and subordinations by RUS of its first lien on borrower's systems and facilities. RUS requires borrowers to submit a long-range financial forecast as part of certain applications requesting a lien accommodation or subordination of its lien. A long-range financial forecast demonstrates that a borrower's system is economically viable currently and in the projected time period. This rule changes some of the requirements regarding long-range financial forecasts.

On May 20, 1997, at 62 FR 27546, RUS published a proposed rule to clarify the financial forecasting requirement for all electric borrowers. The comment period on the proposed rule closed July 21, 1997. Comments received from one borrower regarding the proposed rule are presented as follows:

The proposed rule eliminated the minimum dollar threshold that, when met, necessitated a sensitivity analysis by the borrower. The commenter proposed that the minimum dollar amounts be retained. The commenter proposed that the dollar amounts be increased from \$25 million to \$40 million for power supply borrowers and from \$3 million to \$5 million for distribution borrowers.

RUS has determined that setting arbitrary thresholds for requiring sensitivity studies serves no useful purposes at this time. In some cases the dollar amounts would create unnecessary work for a borrower and for RUS if they remained. In other cases, where borrowers would fall under the minimum dollar amounts, sensitivity analysis would still be needed. RUS has concluded that

the determination as to when a sensitivity analysis should be required should be done on a case-by-case basis at the time a borrower requests an action or approval by RUS. RUS has, however, added examples of those factors that will be taken into account in determining when a sensitivity analysis will be required. It is not, of course, possible to anticipate all factors that will affect the determination. Consequently, the factors listed are examples and are not intended to limit the determination of RUS. The variables to be tested by the sensitivity analysis will be determined by RUS in consultation with the borrower, at an appropriate time.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs-energy, Reporting and recordkeeping, Rural areas.

For reasons set forth in the preamble, RUS hereby amends 7 CFR chapter XVII as follows:

PART 1710 – GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901-905(b), Pub. L. 99-591, 100 Stat. 3341; Pub. L. 103-354, 108 Stat. 3178, (7 U.S.C. 6941 et seq.).

2. Section 1710.300 is amended by removing paragraph (f) and revising paragraph

(d)(5) to read as follows:

§ 1710.300 General.

* * * * *

(d) * * *

(5) A sensitivity analysis may be required by RUS on a case-by-case basis taking into account such factors as the number and type of large power loads, projections of future borrowings and the associated interest, projected loads, projected revenues, and the probable future competitiveness of the borrower. When RUS determines that a sensitivity analysis is necessary for distribution borrowers, the variables to be tested will be determined by the General Field Representative in consultation with the borrower and the regional office. The regional office will consult with the Power Supply Division in the case of generation projects for distribution borrowers. For power supply borrowers, the variables to be tested will be determined by the borrower and the Power Supply Division.

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3. Section 1710.302 is amended by revising paragraphs (b), (d)(1), and (d)(5), to read as follows:

§ 1710.302 Financial forecasts - power supply borrowers.

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(b) The financial forecast shall cover a period of 10 years. RUS may request projections for a longer period of time if RUS deems necessary.

* * * * *

(d) * * *

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for 10 years, unless a longer period of time has been requested by RUS.

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(5) Include sensitivity analysis if required by RUS pursuant to § 1710.300(d)(5).

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Dated: 09/28/98

/s/ *JLT*

Jill Long Thompson

Under Secretary, Rural Development